

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSEPH SCHEINUCK,

Plaintiff,

v.

CAPTAIN D. SEPULVEDA,

Defendant.

No. C 09-0727 WHA (PR)

**ORDER DENYING SECOND
MOTION TO COMPEL; GRANTING
MOTIONS FOR CONTINUANCE;
DENYING MOTION FOR
APPOINTMENT OF COUNSEL**

(Docket Nos. 36, 41, 45, 46)

INTRODUCTION

Plaintiff, a California prisoner proceeding pro se, has filed a civil rights complaint under 42 U.S.C. 1983 pertaining to conditions of his confinement while at the Santa Clara County Jail. Plaintiff has filed a second motion to compel discovery, two motions to continue deadlines, a motion for appointment of counsel and a motion for leave to file an amended complaint.

ANALYSIS

A. Motion to compel

Plaintiff filed an initial motion to compel production of several categories of documents, including his entire classification file. The motion was denied because plaintiff did not in good faith meet and confer with defendant prior to filing his motion, as required by Rule 37(a)(2)(B) of the Federal Rules of Civil Procedure. The Court ordered the parties to meet and confer regarding the classification file and two other categories of documents, and allowed plaintiff, if

1 dissatisfied with the outcome of those efforts, to file a further motion to compel. With respect
2 to the classification file, plaintiff was ordered to specify the documents therein that he seeks and
3 how they may lead to the discovery of relevant information, and defendant was ordered to
4 identify the documents he is willing to produce and explain to plaintiff his reasons for not
5 producing any of the documents plaintiff seeks.

6 On June 15, 2010, defendant wrote to plaintiff indicating that all of the disputed
7 documents except the classification file had been produced to plaintiff. These included all of
8 plaintiff's medical records as well as other documents. Defendant indicated that in short order
9 portions of the classification file would be produced that were not privileged or did not
10 jeopardize the safety of the prison. On June 24, 2010, plaintiff wrote back saying he needed the
11 entire classification file, and that he could not identify specific documents in the file that he
12 wanted or the reasons he wanted them. On June 29, 2010, defendant produced a substantial
13 portion of the records from the classification file, including records concerning the incidents
14 alleged in the complaint. Some of these records were redacted in part. Defendant identified
15 the records that were not produced and the ones that were redacted, explaining that this was due
16 to the information privilege and concerns for institutional safety. Thereafter, on July 15, 2010,
17 plaintiff filed a second motion to compel seeking his entire classification file, minus the names
18 of any confidential informants.

19 Plaintiff has once again failed to comply with the meet-and-confer requirements prior to
20 filing his motion. Plaintiff may meet and confer by telephone or even by mail, and he has made
21 no allegation that his incarceration prevented him from doing so. Rather, he argues that his
22 prior motion to compel and defendant's opposition to that motion constitute their attempts to
23 meet and confer. They do not, and neither does the correspondence between the parties in June
24 2010 described above, because it all precedes the disputed issues raised in the current motion to
25 compel. Upon discovering that the documents produced by defendant did not include all of the
26 documents he wanted from the classification file, plaintiff filed his second motion to compel
27 without attempting to meet and confer with defendant by telephone or even by mail to resolve
28 their differences. The motion to compel can be denied on this basis alone.

1 The motion to compel must also be denied because plaintiff has not specified the records
2 in his classification file that he wants, or explained how they would lead to the discovery of
3 information relevant to his claims, as he was ordered to do. Plaintiff has continued to request
4 the whole file and he states that he cannot narrow his request without looking at the whole file
5 in order to determine which documents are relevant. This is not true. Plaintiff's claims are that
6 defendant failed to protect him when he complained that other inmates were attacking him with
7 cleaning products over approximately sixty days, whereas plaintiff's classification file spans the
8 nearly four years he was at the county jail. Plaintiff could easily narrow his request to only
9 those classification records that relate to the attacks that occurred during the period of time
10 alleged in the complaint. Plaintiff does not do so. Rather, both in his letter to defendant and his
11 current motion to compel, plaintiff continues to seek the entire classification file. As plaintiff
12 has received a substantial portion of his classification file, including documents concerning the
13 incidents alleged in the complaint, and there is no explanation in the record for why he needs
14 the entire file, plaintiff's motion to compel in which he seeks the whole file is denied.

15 B. Motions for Continuance

16 Good cause appearing, plaintiff's motions for continuances to file a reply to defendant's
17 opposition to the motion to compel, and to file an opposition to defendant's motion for
18 summary judgment, are granted. Plaintiff's reply brief on the motion to compel and his
19 opposition to the motion for summary judgment are considered timely.

20 C. Motion for Appointment of Counsel

21 Plaintiff has filed a motion for "appointment" of counsel. There is no constitutional
22 right to counsel in a civil case. *Lassiter v. Dep't of Social Services*, 452 U.S. 18, 25 (1981). 28
23 U.S.C. § 1915 confers on a district court only the power to "request" that counsel represent a
24 litigant who is proceeding in forma pauperis. 28 U.S.C. § 1915(e)(1). This does not give the
25 courts the power to make "coercive appointments of counsel." *Mallard v. United States Dist.*
26 *Court*, 490 U.S. 296, 310 (1989). In short, the court has only the power to ask pro bono counsel
27 to represent plaintiff, not the power to "appoint" counsel. Plaintiff has demonstrated that he is
28 more than capable of presenting his claims effectively, and the issues in this case are not

1 complex. As a result, plaintiff's motion for appointment of counsel is denied.

2 D. Motion for leave to file amended complaint

3 Plaintiff has, for a second time, filed a motion for leave to file an amended complaint.
4 His prior motion was denied because he did not include the proposed amended complaint, and
5 the broad range of claims plaintiff described in his motion indicated that would not be properly
6 joined under Federal Rule of Civil Procedure 20(a).

7 Plaintiff attaches a proposed amended complaint to his motion. The proposed amended
8 complaint adds new defendants whom plaintiff alleges were, along with defendant Sepulveda,
9 responsible for failing to protect plaintiff from the attacks of other inmates. As many of the
10 claims in the proposed amended complaint overlap significantly with the claims against
11 Sepulveda, plaintiff's request to amend the complaint will be addressed in conjunction with the
12 ruling on Sepulveda's pending motion for summary judgment.

13 **CONCLUSION**

14 For the foregoing reasons, plaintiff's motion to compel (docket number 36) is **DENIED**.
15 Plaintiff's motions for continuances (docket number 41 and 46) are **GRANTED**. Plaintiff's
16 motion for appointment of counsel (docket number 45) is **DENIED**.

17 **IT IS SO ORDERED.**

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19 Dated: December 14, 2010.

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21 WILLIAM ALSUP
22 UNITED STATES DISTRICT JUDGE
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